FORM NLRB-4477
(4-96)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MGM GRAND DETROIT, LLC [1]

Employer

and CASE NO. 7-RD-3295

THOMAS SMITH, an Individual

Petitioner

and

MICHIGAN ASSOCIATION OF POLICE
(MAP) 911[2]

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Sections 2(*6*) and (*7*) of the Act.[4]

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(*b*) of the Act:[5]

> All full-time and regular part-time hourly security officers employed by the Employer at is facility located at 1300 John C. Lodge, Detroit, Michigan; *but excluding* surveillance employees, investigators, shift managers, supervisors, assistant supervisors, training instructors, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

MICHIGAN ASSOCIATION OF POLICE (MAP) 911

LIST OF VOTERS[6]

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***N.L.R.B. v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **August 6, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **August 13, 2001**.

Dated July 30, 2001

at Detroit, Michigan

Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices.
Your attention is directed to the attached copy of that Section.

1/ The name of the Employer appears as amended at the hearing.

2/ The name of the Union appears as amended at the hearing.

3/ No briefs were filed by the parties, although the Union entered into evidence a position statement it submitted during the investigation of the instant petition regarding the issue of contract bar.

4/ Both the Employer and Union, contrary to the Petitioner, contend that there is a contract bar to the instant decertification petition. The Union was certified by the Board as the exclusive collective-bargaining representative of the Employer's security officers at its Detroit casino operation on October 25, 1999. Contract negotiations began in January 2000 with the Union deciding to bifurcate the negotiations by first seeking agreement on non-economic terms because of the Employer's concurrent negotiations with the Detroit Casino Council (DCC). The DCC is a coalition of unions, including the Service Employees, Teamsters, and United Auto Workers, representing the Employer's non-guard employees at the casino. The Union feared that the security officers it represented would be jeopardized if the negotiations between the Employer and the DCC ended without reaching an agreement and the DCC's members struck. If a strike occurred and the Employer temporarily ceased operations, the Union would not have any safeguards in place for its members, such as a layoff procedure or recall rights.

Both parties signed a tentative agreement regarding non-economic terms of an initial collective-bargaining agreement on August 18, 2000, with the understanding that they would go into effect immediately upon ratification and that negotiations would continue on economic issues. Matters covered by this tentative agreement, as ratified by the membership, included, inter alia, a grievance/arbitration procedure, a just-cause disciplinary procedure, seniority rights, dues checkoff, hours of work and overtime, layoff and recall, and a no-strike/no-lockout clause. The provisions of the no-strike/no-lockout clause were to be suspended 30 days after agreement was reached between the Employer and the DCC, thus freeing the parties to engage in economic action if no final agreement on economics was reached. After approximately 20 bargaining sessions, the parties also reached agreement on economic terms about November 10, 2000, covering, inter alia, paid time-off for vacations, holidays, and sick time; wages and annual increases; health benefits, including medical, dental, and vision plans, along with life insurance; and a 401(k) retirement plan. There were no signatures or initials from any party on the proposed economic terms, which on December 26, 2000 were submitted as a package to the membership with the non-economic terms for ratification. The membership refused to ratify the contract, which required the parties again to resume negotiations on economics. On February 26, 2001, the membership again voted on revised economic terms, along with the non-economic terms, and ratified the agreement which went into effect retroactively. The revised economic terms as submitted to the membership still did not contain the initials or signatures of either party, and to date the parties have not executed the final contract as they are still in the process of working out typographical errors. The duration of the final contract runs from February 26, 200l to February 25, 2005. On June 27, 2001, the Petitioner filed the instant petition to decertify the Union.

A contract must be signed by all the parties before a rival petition is filed if it is to serve as a bar. ***DePaul Adult Care Communities*****,** 325 NLRB 681 (1998). Unless a contract signed by all the parties precedes a petition, it does not bar an election even though the parties consider it properly concluded and have put into effect some or all of its provisions. Although the terms of the agreement are applied retroactively, contracts signed after the filing of a petition do not serve as a bar. ***Hotel Employees Assn. of San Francisco***, 159 NLRB 143 (1966). However, for contract bar purposes there is no requirement that the parties execute a printed, final, contract. Instead, the common thread running through the Board's contract bar decisions is that "the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." ***Seton Medical Center***, 317 NLRB 87 (1995). This means that a contract need not be a formal document and it may consist of an exchange of a written proposal and a written acceptance. ***Georgia Purchasing***, 230 NLRB 1174 (1977). However, in such instances the informal documents that are exchanged must be signed or initialed by all of the parties in order to serve as a bar to an election. ***Appalachian Shale Products Co.,*** 121 NLRB 1160 (1958); ***Yellow Cab***, 131 NLRB 239 (1961); ***United Telephone Co. of Ohio***, 179 NLRB 732 (1969). Furthermore, the informal documents being asserted for contract bar purposes must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship to which the parties can look for guidance in resolving day-to-day problems. ***Appalachian Shale***, supra. The Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. ***USM Corp.***, 256 NLRB 996 fn. 18 (1981). Consequently, an agreement is a bar when the parties have agreed to all matters except a specific wage provision, or have not agreed to economic conditions but have agreed to interest arbitration on those matters. ***Cooper Tanks & Welding Corp.***, 328 NLRB No. 97 (1999); ***Stur-Dee Health Products***, 248 NLRB 1100 (1980).

In the instant case, the parties have not executed the final agreement covering both economic and non-economic conditions. Consequently, that document may not itself serve as a bar to the instant petition. However, it can be argued that the non-economic tentative agreement executed by the parties and put into effect before the filing of the instant petition covers substantial terms and conditions of employment sufficient to serve as a bar. ***Cooper Tanks & Welding Corp***, supra. Although the non-economic agreement does cover substantial terms and conditions of employment, it left unresolved equally substantial economic terms and conditions of employment that were not resolved until 12 further negotiation sessions. Had agreement not been reached on economic issues, suspension of the no-strike/no-lockout provision could have resulted in a work stoppage. Under these circumstances, it may not be said that the parties' agreement on non-economic issues served to sufficiently stabilize the bargaining relationship for contract bar purposes. Furthermore, by its terms the non-economic agreement was of no fixed term or duration, and was only to remain "in full force and effect until superseded by a complete collective bargaining agreement." Consequently, it was a temporary agreement within the meaning of contract bar rules and cannot itself serve as a bar to an election. ***Bridgeport Brass Co.***, 110 NLRB 997 (1955).

5/ The parties stipulated to the appropriateness of the approximately 130-employee unit, which is consistent with the Certification of Representative.

6/ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

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